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2

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4

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6 COUNSEL FOR CITY OF MERIDIAN

7

AUSTIN DAN CHECK

8

PETITIONER

9

10 ALSO PRESENT: HARRY WILSON
HUGH SMITH

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24 REPORTED BY: Robin G. Burwell, CCR #1651
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1 MR. RIECKE: The matter before us is
2 evidentiary hearing request regarding
3 modification of national pollutant discharge
4 elimination system for the City of Meridian's
5 Publically Owned Treatment Works, 0020117, in
6 Lauderdale County, Mississippi.

7 And at this point I'll turn the hearing
8 over to our representative from the Mississippi
9 Attorney Generals Office.

10 MS. O'NEAL: Good morning. I'm Ellen
11 O'Neal with the Attorney Generals Office. I'll be
12 acting as the hearing officer today in this matter.
13 I believe he's already stated for the record what
14 the matter is regarding. I believe all the parties
15 are here and represented.

16 Do y'all typically -- do you want to state
17 the representatives names of the party -- for the
18 record I mean? Do y'all typically do that?

19 MR. FURRH: My name is Roy Furrh. I'm a
20 lawyer for the Mississippi Department of
21 Environmental Quality. And our witness today will
22 be Harry Wilson, who is director of
23 the Environmental Permits Division of Ustulation
24 Control of the Department of Environmental Quality.
25 Lisa Ouzts is also an attorney for the Mississippi

1 Department of Environmental Quality. She's seated
2 at Harry's left. And Bradley Crain is a staff
3 member who is also sitting with the Department
4 today.

5 MS. O'NEAL: And the petitioner,
6 Mr. Check, are you here today?

7 MR. DAN CHECK: Yes, ma'am.

8 MS. O'NEAL: And I understand that the
9 City of Meridian is here on a Motion to Intervene?

10 MR. GOGGANS: That's correct. Michael
11 Goggans, city attorney for the City of Meridian, and
12 Hugh Smith, the director of Public Works for the
13 City of Meridian.

14 MS. O'NEAL: If there's no other
15 preliminary matters, we can go ahead and take up the
16 Motion to Intervene.

17 MR. GOGGANS: Yes, please.

18 MR. DAN CHECK: I have no objections.

19 MS. O'NEAL: You have no objection to
20 their intervening?

21 MR. DAN CHECK: No, ma'am.

22 MR. GOGGANS: I suppose there's no need
23 for any arguments then, if that's the case. I think
24 all the parties are in agreement.

25 MS. O'NEAL: And I believe he has no

1 objections --

2 MR. FURRH: The Department has no
3 objection to Meridian's Motion to Intervening.

4 MS. O'NEAL: Okay. And I have read the
5 Motion to Intervene. And I spoke with Ms. Ouzts
6 before this. Is this the matter that y'all would
7 like the hearing officer to rule on?

8 MS. OUZTS: Yes.

9 MS. O'NEAL: Having read the Motion to
10 Intervene, and in light of the fact that this permit
11 is regarding Meridian's -- this issue is regarding
12 meridian's permit, I will grant the Motion to
13 Intervene. So, welcome to the party.

14 MR. GOGGANS: Thank you so much.

15 MS. O'NEAL: We have opening statements
16 that anyone would like to make.

17 MR. GOGGANS: For the record, may we
18 attach the Motion to Intervene?

19 MS. O'NEAL: Yes, do. I'm sorry. The
20 Motion will be introduced as Exhibit 1 to the
21 record.

22 (Exhibit 1 marked for identification.)

23 MS. O'NEAL: Ms. Furrh, do you want to
24 proceed with an opening statement?

25 MR. FURRH: Thank you, Ms. Hearing

1 Officer. Members of the permit board, the matter
2 before the permit board today is proposed
3 modification to the Meridian POTW NPDES permit.
4 Permit Board originally approved this permit latter
5 part of last year. And I just wanted to kind of
6 briefly summarize the events that have occurred
7 related to this proposed permit application.

8 Mr. Check, who's the petitioner today, did
9 request a public hearing to be held in the Meridian
10 area related to this proposed permit modification
11 last year. The Department went to the Permit Board
12 to gauge the Permit Board's interest in providing a
13 public hearing in this particular matter. And the
14 Permit Board's initial decision was they did not
15 feel that there was significant public interest to
16 actually hold a public hearing on this proposed
17 permit modification in Meridian.

18 At one time Mr. Andrew Whitehurst, he's
19 with the Gulf Restoration Network, also requested a
20 public hearing, that Mr. Whitehurst did withdraw his
21 request for a public hearing.

22 After the Permit Board made its initial
23 determination not to provide a public hearing due to
24 the lack of significant interest related to the
25 proposed Meridian POTW NPDES permit, Mr. Check was

1 notified, and he requested to address the Permit
2 Board directly related to his request for a public
3 hearing. At the next Permit Board meeting,
4 Mr. Check did so, the Permit Board heard his
5 arguments related to needing a public hearing in
6 Meridian, and the Permit Board again decided not to
7 provide a public hearing in Meridian due to the lack
8 of public interest.

9 Also, the proposed permit modification was
10 presented to the Permit Board, and the Permit Board
11 did issue the modification to the NPDES permit to
12 Meridian. Since then Mr. Check has requested an
13 evidentiary hearing, which we're here today before
14 the Board to discuss.

15 Briefly, Mr. Check has provided both
16 refiled direct and rebuttal testimony. The two main
17 arguments, I believe, that he has is, number 1, that
18 he should have been provided a public hearing in
19 Meridian. Again, as I mentioned in my earlier
20 remarks, the Permit Board considered on two
21 occasions Mr. Check's request related to holding a
22 public hearing in Meridian.

23 I believe Mr. Check was concerned that he
24 wasn't there for the first meeting, but he was
25 certainly allowed to address the Board, related his

1 interest to have a public hearing in the subsequent
2 Permit Board meeting. The Board listened to his
3 arguments and decided not to grant his request for a
4 public hearing.

5 Mr. Check suggests that not allowing him a
6 public hearing in this particular matter is contrary
7 to federal regulation. And that's simply just not
8 the case. We have state law as well as state
9 regulation, and federal regulation as well is very
10 clear it's up to the Permit Board and its discretion
11 to decide whether or not to have a public hearing
12 related to a permit application such as Meridian's
13 POTW NPDES application. The Permit Board considered
14 Mr. Check's arguments and chose not to provide that
15 public hearing due to lack of public interest.

16 The second point Mr. Check raises is
17 non-compliance. Mr. Check claims that Meridian is
18 currently in non-compliance, has been in
19 non-compliance in the past as well. Let me set the
20 stage of Meridian's POTW. We're talking about a
21 municipal waste water system that provides service
22 for citizens for the state. I think DEQ is going to
23 first admit Meridian has had its issues. There's
24 been orders related to overflows in the past. And
25 Meridian has dealt with those overflows, and has

1 been penalized in the past. We do want to be
2 upfront on that.

3 Also, Meridian had a problem with a milk
4 truck that actually exposed some sour milk into the
5 POTW, and was penalized for that incident as well.
6 Mr. Check mentions a current situation where there's
7 been an overflow as well.

8 Department has looked at Mr. Check's
9 allegations and related compliance history, and
10 acknowledges Meridian has had its issues. But the
11 citizens need sewer services. And obviously, we're
12 working with Meridian to improve the efficiency of
13 its waste water system. The Department believes
14 this proposed permit modification does just that.

15 As mentioned in Mr. Harry Wilson's
16 pretrial testimony, the proposed permit modification
17 would eliminate an outcrawl in the Sowashee Creek
18 and one of the most sensitive areas, which is
19 obviously is an environmental improvement for
20 Meridian.

21 Briefly to explain what the modification
22 does, Meridian would supply the treated affluent
23 from its east and south POTWs to Mississippi Power
24 Company for use as cooling water as integrated gas
25 combined site, or IGCC facility in Kemper County.

1 The treated affluent from Meridian's east and south
2 POTWs would then be transported to the IGCC facility
3 via 31-mile pipeline.

4 So, the east POTW is going to be taken off
5 line, so now there will not be a discharge from that
6 POTW to Sowashee Creek, which we believe is a
7 dramatic environmental improvement for the system
8 itself. Harry Wilson will provide direct and
9 rebuttal testimony, and will be subject to
10 cross-examination and questions for the Permit Board
11 members, is very familiar with this permit, and will
12 answer any other questions posed by the parties
13 today.

14 In conclusion, we thank the Permit Board
15 consideration today relating to this matter. The
16 Department recommends this permit modification be
17 affirmed and issued to Meridian.

18 Thank you.

19 MS. O'NEAL: Mr. Goggans; is that right?

20 MR. GOGGANS: Yes, ma'am.

21 Mr. Furrh has addressed a lot of the
22 questions that -- a lot of concerns that the City of
23 Meridian would have. The request from Mr. Check for
24 a public hearing has been heard multiple times and
25 already ruled upon. That is clearly within the

1 discretion of the Board that declined to have a
2 public hearing.

3 In regards to the affect on Meridian if
4 this Board sought to rescind or found suitable to
5 rescind the permit, Meridian would be in a very
6 tenuous position. Because of a contract that we've
7 entered into with the power plant based upon the
8 issuance of this permit, we're faced with the
9 proposition of being in breach of that contract if
10 this permit were to be rescinded. So, we would
11 strongly urge you to withhold the permit as issued.

12 Thank you very much.

13 MS. O'NEAL: Mr. Check, would you like to
14 make an opening statement?

15 MR. DAN CHECK: Yes, ma'am.

16 Thank you for this opportunity. I've
17 heard the two opening comments from both MDEQ and
18 City of Meridian. In Mr. Furrh's comment, he
19 related to Andrew Whitehurst withdrawing his request
20 for a public hearing. What Mr. Furrh did not
21 mention is that Mr. Whitehurst/Gulf Restoration
22 Network, is in a lawsuit with the City of
23 Hattiesburg for 5,000-something days in concerning
24 loading and certain tributaries down there. A
25 motion was filed -- the lawsuit was filed in 2012,

1 but a motion was filed to renew January 7th of this
2 year.

3 And it's interesting that the third year
4 students of Tulane University are representing Gulf
5 Restoration Network. And what's real interesting is
6 who is representing the City of Hattiesburg, is the
7 law firm of Brunini and Brunini. I just want that
8 to go into the record.

9 In reference to the public hearing, I
10 think very shortly, within the next five minutes,
11 it's resolved as to why myself and others were not
12 granted a public hearing. And that, very simply,
13 through these proceedings and into this evidentiary
14 process, I received sworn testimony. One was an
15 affidavit from Hugh Smith, who is director of Public
16 Works in Meridian. This was signed and notarized
17 the 19th of February of this year. If you go to
18 page 2, number 6, he states --

19 MS. O'NEAL: Mr. Check, I'm going to stop
20 you.

21 MR. DAN CHECK: Very briefly. He's
22 stating that the City of Meridian is in compliance
23 with their permits.

24 MS. O'NEAL: Mr. Check --

25 MR. DAN CHECK: Issues at the same time --

1 MS. O'NEAL: Mr. Check, I'm the hearing
2 examiner, you're going to have to stop.

3 MR. DAN CHECK: The bottom line is, to
4 save time, the City of Meridian MDEQ are not in
5 compliance and are in violation of the existing
6 permit. Therefore -- and they're in violation of
7 the memorandum agreement, they're in violation of
8 the Navy contract. He refers to how they're worried
9 about compliance with the treatment plant, but
10 they're not in compliance with the Navy contract for
11 the east POTW.

12 Numerous other instances -- on the 21st of
13 February --

14 MR. RIECKE: Mr. Check, suffice to say
15 that your view in your opening statement is, the
16 City of Meridian is not in compliance, therefore,
17 that's why I object to the issuance of this permit;
18 is that correct?

19 MR. DAN CHECK: Meaning this hearing is
20 moot because they presented false documentation, and
21 therefore, these proceedings are -- for all
22 practical purposes, are invalid. So, therefore, I'm
23 leaving, and you can put that on record. I'd like
24 to have a copy of the -- and I'm assuming we're
25 going to have a transcript of this proceeding.

1 MR. RIECKE: This is just opening
2 statement. This is your chance to --

3 MR. DAN CHECK: There's no reason to waste
4 anybody's time if they're in violation of their
5 existing permit. How can you modify a permit that's
6 in violation? And it's right here on the --

7 MS. O'NEAL: Mr. Check, there has been no
8 sworn testimony yet.

9 MR. DAN CHECK: I understand.

10 MS. O'NEAL: So, if you leave at this
11 point, the record is not going to reflect anything
12 but your comments. There's no evidence, there's no
13 sworn testimony. This was your opportunity for
14 opening statement.

15 And let me add, that you will respect my
16 duty here as a hearing officer or you will be
17 escorted out of the building.

18 MR. DAN CHECK: Ma'am, I'm leaving right
19 now. You have a good day.

20 MS. O'NEAL: So, are you withdrawing your
21 request for an evidentiary hearing?

22 MR. DAN CHECK: I am not withdrawing.
23 This is a sham, it's moot. They're in violation of
24 the existing permits. And how you can remodify
25 permits that have been in violation for 20-something

1 years, it's --

2 MS. O'NEAL: Mr. Check, are you
3 withdrawing your request for an evidentiary hearing?

4 MR. DAN CHECK: No, ma'am.

5 MS. O'NEAL: Do you want an evidentiary
6 hearing?

7 MR. DAN CHECK: I've got it. That's for
8 the record. And there's no sense in wasting
9 everybody's time.

10 MS. O'NEAL: Well, I believe the Permit
11 Board can decide that --

12 MR. DAN CHECK: We already know what the
13 result is going to be.

14 MS. O'NEAL: Mr. Check, I'm talking.

15 MR. DAN CHECK: I'm sorry.

16 MS. O'NEAL: I believe at this point the
17 Permit Board -- Mr. Check is essentially withdrawing
18 his request --

19 MR. DAN CHECK: No, ma'am, I am not
20 withdrawing it. Put that in the record.

21 MS. O'NEAL: We'll have a vote then.

22 Do you have anything you want to present
23 at the evidentiary hearing, any evidence, any
24 testimony under oath?

25 MR. DAN CHECK: The only document that

1 would be the -- if you so desire, is this testimony
2 on March 7th. If you want to include that in the
3 record, that's fine.

4 MS. O'NEAL: Mr. Check, let's go ahead and
5 have the Department put on their case and Meridian,
6 and then you can put on yours if you have any.

7 MR. DAN CHECK: Ma'am, I'm not trying to
8 be disrespectful, but there's a rational as to why
9 and what I'm doing. And the proceedings to date
10 have been moot.

11 MS. O'NEAL: Can you have a seat then, and
12 let's go ahead and proceed with putting on the
13 evidence. We're here --

14 MR. DAN CHECK: Thank you. I do have a
15 request to get copy of the transcript.

16 MS. O'NEAL: That's public record. You're
17 entitled to that.

18 MR. DAN CHECK: Thank you. Have a good
19 day.

20 MS. O'NEAL: Okay. Mr. Furrh, let's go
21 ahead and put the pretrial testimony into evidence.

22 MR. RIECKE: I want the record to show and
23 the transcript to show that, at this point,
24 Mr. Check left the room for the evidentiary hearing
25 that he called. And the transcript will show that

1 he thought the whole thing was moot.

2 Okay. Let's proceed.

3 MR. FURRH: The Department's only witness
4 is Harry Wilson.

5 MS. O'NEAL: Is there a need to put on any
6 witnesses? That's up to y'all. But it may be we
7 can just introduce the pretrial testimony.

8 MR. WILSON: I'd like to go up there. I'm
9 quite prepared.

10 MS. O'NEAL: That's fine. Go ahead.

11 (Exhibit 2 marked for identification.)

12 (Exhibit 3 marked for identification.)

13 DIRECT EXAMINATION OF HARRY WILSON

14 Q (By Mr. Furrh) Harry, would you please
15 state your name for the record?

16 A. Harry Wilson.

17 Q. And where do you work?

18 A. The Mississippi Department of
19 Environmental Quality.

20 Q. And what is your position?

21 A. I'm chief of the environmental permits
22 division.

23 MR. FURRH: May I approach the witness?

24 MS. O'NEAL: Yes.

25 Q. (By Mr. Furrh) Harry, I have handed you

1 two documents. Could you please describe the two
2 documents I provided you?

3 A. Yes. They're my direct testimony in the
4 form of an affidavit, and my rebuttal testimony in
5 the form of an affidavit for this evidentiary
6 hearing.

7 MR. FURRH: And I would like those
8 documents introduced into the record as DEQ's first
9 exhibits. I'd like Harry's direct testimony
10 affidavit and rebuttal affidavit introduced into the
11 record. Is that okay?

12 MS. O'NEAL: Yes. I'm sorry. We were
13 discussing something. I apologize. Those will be
14 marked as Exhibits 2 and 3 to the record, please.

15 MR. FURRH: And I will tender Harry for
16 questioning, obviously, for both the City of
17 Meridian and for the Permit Board members at this
18 time.

19 MR. GOGGANS: City of Meridian has no
20 questions.

21 MS. O'NEAL: Any of the Permit Board
22 members have any questions for Mr. Wilson?

23 MR. SNODGRASS: I have one question.

24 CROSS-EXAMINATION

25 Q (By Mr. Snodgrass) What is the violation

1 that mr. Check was referring to?

2 A. I believe his rebuttal testimony was a lot
3 of pictures of some sanitary sewer overflows. And I
4 can't authenticate the pictures, but in our
5 discussion with the Compliance of Enforcement
6 Division, we know there have been instances of
7 sanitary sewer overflows. We think things are much
8 better in Meridian with regard to those overflows
9 these days than they were a few years back. It
10 takes time to remedy old infrastructure, but they
11 are doing -- they are doing a good job of remedying
12 that.

13 Now, the other thing I would like to say
14 is, the permit -- the Permit Board issues a modified
15 in November, it is the enforceable document that
16 helps us go out and investigate. And no instances
17 of non-compliance such as sanitary sewer overflows.
18 So, it is important that permit stays in effect.
19 And we were fully prepared to have a full
20 evidentiary hearing today.

21 MS. O'NEAL: Any further questions from
22 the Permit Board?

23 Mr. Furrh?

24 REDIRECT EXAMINATION

25 Q. (By Mr. Furrh) Mr. Wilson, I believe you

1 talked about the complaint that Mr. Check lodged
2 around February 21st related to the sewer overflows?

3 A. Correct. It appears in his testimony that
4 he had submitted something to like the EPA National
5 Response Database. And we tried to investigate that
6 database and the website was down. We've asked our
7 Compliance of Enforcement Division to look into that
8 matter and see if they can determine the situation
9 with this alleged day that a certain part of their
10 Meridian system was allegedly overflowing.

11 The pictures were kind of difficult to
12 read and authenticate, obviously. And Mr. Check is
13 no longer here so -- but we are going to examine
14 that allegation even though Mr. Check has now left
15 the building.

16 And it would be helpful if Mr. Check would
17 contact Les Herrington or Jim Harvey with our
18 Compliance of Enforcement Division instead of
19 database over in Atlanta so we can get over there to
20 look at it on the day that he sees it. But I'm not
21 sure if that's what Mr. Check wants.

22 Q. Mr. Wilson, I believe Mr. Check submitted
23 his pretrial rebuttal testimony, which he included
24 in his complaint that he submitted to EPA or this
25 national organization. It was dated March the 7th,

1 2014; is that correct?

2 A. That's correct.

3 Q. So, as far as you know, did MDEQ receive
4 notice before March the 7th, 2014 related to this
5 alleged February 21st, 2014 overflow?

6 A. Not to my knowledge.

7 MR. FURRH: That's all the questions I
8 have at this point.

9 CROSS-EXAMINATION

10 Q (By Mr. Riecke) Okay. Harry, just
11 briefly. Mr. Furrh illuded to permit violations by
12 the City of Meridian. And can you just tell us the
13 city's response to those violations and --

14 A. I think so. I think there was an order in
15 around 2010 that did address sanitary sewer
16 overflows that had happened in the past. And up
17 until 2010, there were stipulated penalties, and
18 there was some -- I believe there was some penalty
19 money that was held in abeyance that could be used
20 to study the sewer system to look for remedies. I
21 think they paid about \$8,000 in penalties.

22 And they did do the studies, and they
23 identified areas in the town that needed to be
24 addressed. And they pursued those projects, and I
25 believe made some -- made some good effort towards

1 remedying those situations.

2 I believe there was an order in 2011 that
3 dealt with their acceptances of spoiled milk that
4 got into the system and slugged the plant allowing
5 untreated water -- untreated waste water to go to
6 Sowashee Creek, suck the oxygen out of the water.
7 And apparently ended up with fish kill.

8 There was also some operational problems
9 with the plant where they had not fixed aerators or
10 blowers and things of that nature addressed in that
11 particular order. And there was an instance where
12 some sludge had been placed improperly by a
13 contractor of theirs, I believe. May not have been
14 completely the city 's fault. That order, for the
15 record, I think had around a little over a \$50,000
16 penalty. Half of that was, I believe, put in
17 abeyance so that they could study the concept of the
18 sewer utility district, which is an environmentally
19 supporter thing.

20 I think that met with some low resistance
21 and is now a moot idea. And I believe they resolved
22 the outstanding penalty on that. And I believe they
23 fixed those things that had not been properly
24 maintained, such as that low aerator's work and that
25 type of thing.

1 MS. O'NEAL: Any further questions for
2 Permit Board members?

3 In light of that, Mr. Furrh, do you have
4 any additional redirect?

5 MR. FURRH: Just a couple of questions.

6 REDIRECT EXAMINATION

7 Q. (By Mr. Furrh) Mr. Wilson, you talked
8 about this proposed modification. Do you think it's
9 an improvement from what Meridian had before?

10 A. I do. The east Meridian plant was
11 discharging at a location on Sowashee Creek. It was
12 more environmentally sensitive from the modeling
13 that we did than the location where the south plant
14 discharges. So, just in the fact that now the east
15 Meridian's treated affluent is transported down to
16 the south Meridian's outflow line is a positive
17 thing.

18 And then the sheer nature of the permit
19 modification that allowed the waste water to
20 normally go to the Mississippi Power IBCC plant is
21 going to take all of the treated sewage out of
22 Sowashee Creek most all of the time once the plant
23 becomes operational. So, that's an environmental
24 benefit that does what the NPDES permit program is
25 really all about, which is eliminating discharges

1 from waters in the state.

2 Q. I believe you touched on this, Mr. Wilson,
3 relating to Meridian's compliance history. Have
4 they improved over the last few years?

5 A. They have. We discussed how they have
6 been doing the past few years since those orders
7 have been executed. And the message that I got is
8 there have been significant improvements within
9 their collection system and with their treatment
10 system.

11 Q. But overflows do occur at these sewer
12 systems like Meridian and Jackson and other systems
13 like that?

14 A. Every town that has really older
15 infrastructure, sewer infrastructure is going to get
16 holes in it eventually. And that's a national
17 problem for southeastern, but it's a problem that's
18 going to happen over a matter of years. When sewer
19 lines get holes in them, when it rains, they fill up
20 with rainwater, and it overcomes the design capacity
21 and piping, and the water is going to find a place
22 to get out, which is sometimes the manhole lid or an
23 other weak spot in the sewer system.

24 It is a problem that happens over a slow
25 period of time and takes time and money to fix. And

1 I think that Meridian is seeking the proper funding
2 and has plans to address their problem areas in
3 their city.

4 Q. Is the department working with Meridian
5 and other municipalities relating to those overflow
6 issues?

7 A. Absolutely, we are.

8 Q. Trying to make sure that they're
9 eliminated?

10 A. Exactly. And again, had Mr. Check stayed
11 here, we would have asked him again to report a
12 problem when he sees it, and we would go out there
13 and investigate and try to make sure that the city
14 is addressing that particular area of their sewer
15 system.

16 Q. Could you please provide the Permit Board
17 a little background on Mr. Check's request for a
18 public hearing in Meridian?

19 A. Yes. I guess he wanted a public hearing
20 from -- after he saw the public notice soliciting
21 written comments. He wrote a letter. Andrew
22 Whitehurst representing Gulf Restoration Network
23 wrote a couple of letters, both asking questions and
24 presenting comments, and both requesting a public
25 hearing for -- and we called Andrew Whitehurst

1 because it seemed as if they were -- it was very
2 apparent to me they were talking and putting their
3 comments together collectively.

4 I remember asking Andrew if Mr. Check
5 would like to meet. I have since talked to Andrew.
6 He doesn't -- he recollects that I asked him to ask
7 Mr. Check to meet. He doesn't recollect if he ever
8 did ask Mr. Check, or if he did, if Mr. Check
9 accept.

10 We, again, met with Andrew Whitehurst, and
11 his comments to me after we had about an hour long
12 meeting, which there's nothing secret about it,
13 other than us looking at his letters and explaining
14 the permit, he said, "I wish I never wrote those
15 letters now that we sat down and talked about the
16 permit modifications."

17 Mr. Check has obviously since then, since
18 he was the remaining commenter, and his comments
19 were the same as Mr. Whitehurst's comments, we felt
20 like we could address those to the Permit Board.
21 Mr. Furrh's opening obviously took you through the
22 rest of the chronology where the Permit Board had
23 the statutory authority to grant him a public
24 hearing or not. And we so twice -- the permit was
25 twice chose to deny that.

1 Then Mr. Check had an opportunity to
2 address the Permit Board in the November meeting
3 after the second denial, and the Permit Board heard
4 his comments and voted to go ahead and issue the
5 modification to the permit.

6 MR. FURRH: I don't have any other
7 questions.

8 MS. O'NEAL: Mr. Wilson, you can step
9 down.

10 City of Meridian, Mr. Goggans.

11 MR. GOGGANS: Thank you. First, I'd like
12 to introduce the affidavit of direct testimony of
13 Mr. Smith.

14 MS. O'NEAL: If there's no objection.

15 MR. FURRH: No objection.

16 MS. O'NEAL: The affidavit will be
17 introduced as Exhibit 4 to the record.

18 (Exhibit 4 marked for identification.)

19 MR. GOGGANS: And I have no questions for
20 Mr. Smith of MDEQ.

21 MR. FURRH: I just have one or two.

22 MR. GOGGANS: Okay.

23 MS. O'NEAL: Mr. Furrh, we just
24 realized -- or they just pointed out to me I
25 neglected to swear in the witness.

1 Mr. Wilson, can we swear you in now and
2 state that everything that you stated beforehand
3 was -- I apologize.

4 Ms. Court Reporter, can you fashion an
5 oath that would fit his prior testimony?

6 (Wintess Sworn.)

7 MS. O'NEAL: Mr. Smith, we will now swear
8 you.

9 HUGH SMITH,
10 Having been first duly sworn, was examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 Q. (By Mr. Furrh) Mr. Smith, I just got a
14 few questions. Mr. Check, earlier today illuded in
15 his opening statement about a sewer overflow on
16 February 21st. Do you know what he was talking
17 about?

18 A. I do not. But to, I guess, provide some
19 insight to that issue, as Mr. Wilson said, there are
20 occasions that we do have bypasses. I'm not aware
21 of the specific one that he's referring to, but to
22 say that it doesn't happen or has not happened would
23 be incorrect. But I'm not aware of that specific
24 bypass.

25 Q. And Harry noted earlier today, Harry

1 Wilson, that there have been orders issued to
2 Meridian. What is Meridian doing to improve their
3 waste water system at this time?

4 A. Some of those orders outline specific
5 actions that we had to take, and we've taken those.
6 Some of the more proactive steps that we've made is
7 to go out and address those issues before it gets to
8 the level of a requirement from MDEQ.

9 We're currently in the process of
10 modifying the system somewhat to prevent this as
11 those that we're talking about, either rerouting
12 flows to areas that are not as surcharged or
13 capacity exists, or issues going in making what we
14 call point repair, or fixing specific problems in
15 the collection system.

16 Q. Are there any pending legal actions or any
17 other conflicts between Meridian and Mr. Check at
18 this time?

19 A. Not that I'm aware of. Not to my
20 knowledge, no, sir.

21 MR. FURRH: Okay. Thank you.

22 MS. O'NEAL: Does the Permit Board members
23 have any questions?

24 MR. RIECKE: I do have one, Mr. Smith.

25 CROSS-EXAMINATION

1 Q (By Mr. Riecke) The City of Meridian's
2 waste water system, treatment system, is it one of
3 those that the storm flows are separate from stuff
4 coming out of houses or is it a combined system?

5 A. It's not a combined system. We do have
6 what we call I&I, inflow infiltration. And if you
7 look at what you call storm flows, sometimes you
8 would wonder that, but it, in essence, is not a
9 combined system.

10 Q. So, it's not where it rains along,
11 everything goes into the storm flows and is combined
12 with the what's coming out of the houses, the
13 treatment is at that point bypassing partially
14 treated or untreated sewage because of the difficult
15 in capacity?

16 A. We do not have the permit approval to
17 bypass any flow that enters into our collection
18 system. So, at one time prior to, and I want to say
19 2008 maybe, we did have what we call storm cell.
20 And during periods of heavy rain, it had been an
21 approved practice. But upon the notification from
22 MDEQ that that activity had to cease, we did.

23 So, since then, we have not bypassed any
24 flow that has made it into the collection system
25 unless it is, as what Mr. Wilson discussed in the

1 SSO, which is not approved overflow.

2 Q. What is SSO?

3 A. Sanitary sewer overflow.

4 Q. Okay. Has Mr. Check -- does he comment
5 with the city -- or does he attend city council
6 meetings specifically on the treatment operation of
7 this waste water --

8 A. Prior to today, I had not met Mr. Check.

9 Q. You had never met him?

10 A. Right. He could have been talking to me
11 in the hallway, and I wouldn't have been familiar
12 enough to --

13 Q. Does he send faxes or letters?

14 A. Not that I'm aware of. Now, we've gone
15 through a new administration. I've only been a
16 director for about eight months, so I can't speak
17 historically in his defense. But as of today, if he
18 would have spoke to me in the hallway -- and I've
19 been in the collection portion of the city's
20 operations for over 14 years, and I have never
21 spoken to him directly concerning the issues that he
22 referred to today.

23 Q. And did you work for the city that long?

24 A. Yes.

25 Q. So, your supervisors never said, we've got

1 that guy named Check complaining blah, blah, blah?

2 A. We know of him in existence, but as far as
3 relationship, no.

4 Q. Okay.

5 A. I've heard the name Dan Check. I've heard
6 the complaints from Mr. Dan Check, but has he ever
7 sit down and ever discussed those issues? No, he
8 has not. Prior to today, I wouldn't have known who
9 he was.

10 MS. O'NEAL: Mr. Goggans, did you have
11 some questions for Mr. Smith?

12 MR. GOGGANS: Just for the Board's
13 information, if I could respond to that question.
14 Mr. Check does bombard the city with frequent
15 information request on a very regular basis
16 regarding every facet of the sewer operation. And
17 in regards to any litigation with him, we recently
18 issued \$1.2 millions in bonds for sewer upgrades.
19 And he filed an objection to that, which was
20 unsuccessful. And then he appealed it to the
21 Mississippi Supreme Court. Failed to meet all
22 deadlines. And so, it was dismissed.

23 And then he filed a Motion for
24 Reconsideration to their dismissal which was then
25 dismissed. So, there's presently no pending

1 litigation with Mr. Check, although I do think
2 there's three requests for information that I have
3 sitting on my desk.

4 MR. RIECKE: I do have one question.

5 Q (By Mr. Riecke) So, you're under contract
6 with ISDG --

7 A. Mississippi Power Company.

8 Q. Send that waste water up there.

9 In the unlikely event that they don't get
10 permitted, okay, what's the city's plan B?

11 A. To quantify your question, they being the
12 power company or us as far as the permit?

13 Q. You, the city.

14 A. If we could not meet the contractual
15 obligations that we have with the power company, as
16 part of this whole process, there were permit
17 modifications done along the way to maintain both
18 the integrity of the plant and its operation and the
19 contract and Mississippi Power, you know, go. This
20 has been an ongoing process for several years, so
21 it's not like we all -- we got here yesterday.
22 We've been deal withing Mr. Wilson periodically
23 throughout this whole process to make sure that --
24 you know, that the spirit of the NPDES permit
25 process was being maintained as well as the goals at

1 issues for both parties, being the city and
2 Mississippi Power Company.

3 Q. I think you answered it, but I'll put it
4 another way.

5 A. Okay.

6 Q. Let's say the power company says, no, we
7 can't handle any of your waste water, does the city
8 have a plan to deal with it then?

9 A. Yes. There is a portion of that permit --
10 let me just say this: There's already
11 infrastructure in place to prevent us from going
12 back to the old permits. And I think that's kind of
13 where you were going. There's currently
14 infrastructure that has been built that would not
15 allow that, but if there's a situation where the
16 power company could not accept that at some point in
17 time, there are also provisions, hence, the
18 modification we're talking about here today, to
19 allow the plant to discharge to the creek with
20 treated quality affluent. Is that --

21 Q. Yes, that's actually what I wanted to
22 know. Do you have a plan B?

23 A. We do.

24 MS. O'NEAL: Anything further from this
25 witness? Mr. Smith, you may step down.

1 THE WITNESS: Thank you.

2 MS. O'NEAL: At this point, this would be
3 the opportunity for Mr. Check to present his
4 evidence and testimony in support of his request for
5 evidentiary hearing. Mr. Check has left. Let the
6 record reflect that, I think it already has.

7 So, if there's no further evidence to be
8 introduced, we can do closing statements if you'd
9 like, or however you would like to proceed.

10 MR. FURRH: I'll briefly close.

11 Members of the Permit Board, I'm sorry
12 Mr. Check left today. You've heard testimony from
13 Harry Wilson with the staff of the Department of
14 Environmental Quality. He believes that the permit
15 modification proposed by Meridian would be helpful
16 to the city from an environmental standpoint.

17 Mr. Check did bring up some things in his
18 opening statement related to compliance history. I
19 think Harry has been honest, that there has been
20 some issues in the past that Meridian has improved
21 recently.

22 And in summary, the Department would
23 recommend that the Permit Board firm its previous
24 decision to issue this proposed permit modification
25 for Meridian POTW.

1 MS. O'NEAL: Mr. Goggans, anything?

2 MR. GOGGANS: I would just echo those same
3 sentiments. I believe that the testimony has been
4 clear that this is in the best interest of the city
5 and in best interest of the state. And we would ask
6 that the permit stand.

7 MS. O'NEAL: I believe the question is now
8 before the Permit Board of whether to affirm its
9 prior granting of the modification of the permit.

10 How do y'all proceed here? Do you go into
11 executive session?

12 MR. RIECKE: Not unless someone wants to.
13 We can do that if someone wants to. I don't see
14 anybody jumping for that. So, we have a decision to
15 make. Our options are to affirm our decision to
16 grant the permit to the City of Meridian for their
17 treatment facility or to rescind, I think that's a
18 term, rescind our decision of granting that permit.
19 So I'll be happy to entertain a motion.

20 MR. LIPE: I move that we affirm our
21 earlier position.

22 MR. RIECKE: Which is to issue the permit?

23 MR. LIPE: Issue the permit.

24 MR. BOGRAD: Second.

25 MR. RIECKE: We have motion and a second.

1 Is there any discussion?

2 All in favor, signify by saying aye.

3 All opposed, same sign.

4 Any extensions?

5 So, we've affirmed our decision to issue
6 the permit. And on -- any other business we need to
7 discuss?

8 Do we have motion to close the evidentiary
9 hearing?

10 MR. SNODGRASS: So move.

11 MR. LIPE: Second.

12 MR. RIECKE: Motion to close. All in
13 favor, signify by saying aye.

14 All opposed, same sign.

15 Any extensions?

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1 CERTIFICATE OF COURT REPORTER

2 I, Robin G. Burwell, Court Reporter and
3 Notary Public, in and for the State of Mississippi,
4 hereby certify that the foregoing contains a true
5 and correct transcript of the proceedings, as taken
6 by me in the aforementioned matter at the time and
7 place heretofore stated, as taken by stenotype and
8 later reduced to typewritten form under my
9 supervision by means of computer-aided
10 transcription.

11 I further certify that under the authority
12 vested in me by the State of Mississippi that the
13 witness was placed under oath by me to truthfully
14 answer all questions in the matter.

15 I further certify that I am not in the
16 employ of or related to any counsel or party in this
17 matter and have no interest, monetary or otherwise,
18 in the final outcome of this matter.

19 Witness my signature and seal this the
20 24th day of March, 2014

21

22

Robin G. Burwell, CCR
CCR #1651.

23

24

My Commission Expires

25